

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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K.H.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK, ARCHBISHOP
STEPINAC HIGH SCHOOL, ST. MATTHEW
CHURCH; and ST. MATTHEW SCHOOL,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, K.H., by and through undersigned counsel, respectfully shows to this Court and alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. The Plaintiff, when he was a minor, was sexually assaulted over a period of years by educators employed by the Archdiocese of New York, including Michael J. O'Hara, a Catholic school teacher at St. Matthew in Hastings-on-Hudson, New York; Eugene Maher, a Catholic Youth Organization (CYO) basketball coach; and Father Donald Malone, the Principal of Archbishop Stepinac High School in White Plains, New York.

Parties, Jurisdiction and Venue

1. Plaintiff, K.H., is a citizen and resident of the State of California. Plaintiff brings this Complaint using his initials because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment

and further psychological damage if his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, Archdiocese of New York (hereafter, the “Archdiocese” or the “Archdiocese of New York”), is a religious institution and organization with principal offices located at 1011 First Ave., New York, NY 10022. The Archdiocese of New York controls all Catholic religious, pastoral and educational functions in the boroughs of Manhattan, Bronx and Staten Island, and in other counties in the greater New York metropolitan area. The Archdiocese operates and controls approximately 370 parishes, 274 schools and 90 Catholic charities. The Archdiocese operates and controls CYO sports leagues and teams. The Archdiocese is a citizen and resident of the State of New York.

3. Defendant, St. Matthew Church, is a Catholic parish and church located in Hastings-on-Hudson, New York. The parish has a school, known as St. Matthew School. (Hereafter the parish and school are collectively referred to as “St. Matthew” or the “Church”). At all relevant times, St. Matthew was owned, controlled and operated by the Archdiocese of New York.

4. Defendant, Archbishop Stepinac High School (“Archbishop Stepinac”), at all relevant times was an all-boys high school located in White Plains, New York, operated by the Archdiocese of New York.

5. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

6. Personal jurisdiction lies over Defendants Archdiocese and the Church as they are present and domiciled in the State of New York.

7. Venue of this action lies in New York County as one of the Defendants resides in New York County.

Notice of Sexual Abuse

8. Michael J. O'Hara was a sexual predator and serial pedophile with as many as 200 victims over a period of approximately 25 years. Upon information and belief, at all relevant times, Defendants Archdiocese of New York and St. Matthew, among other Archdiocesan organizations, knew of O'Hara's sexual abuse of boys during his career as a teacher and director at a CYO camp yet continued to give him unfettered access to boys.

9. As a young man, O'Hara volunteered as a Boy Scouts' assistant scoutmaster and then scoutmaster for Troop 115 in Hewlett, New York, and he worked at the Queens Shelter for the Advancement of Youths. In or about 1963, O'Hara became a substitute teacher employed by the Archdiocese of New York in its Catholic schools. In these positions, O'Hara sought access to boys to sexually molest.

10. In or about 1966, a complaint of child sexual abuse was made against O'Hara by a Troop 115 boy scout. Troop 115 met at and was associated with St. Thomas the Apostle Catholic Church in West Hempstead, New York ("St. Thomas"). The complaint of child sexual abuse was reported to the National Council of the Boy Scouts of America. A letter from a St. Thomas official to a local Boy Scouts' official expressed grave concern over the allegation against O'Hara, requesting that the Boy Scouts take action to "protect our youth," noting that "[t]his incident happened once, and will certainly happen again unless this man [O'Hara] is taken out of his scouting capacity. Who knows how many times this [child sexual abuse] has happened before and how many youngsters,have been badly influenced by [O'Hara]." The Boy Scouts in response asked O'Hara to resign from his position as scoutmaster. A subsequent letter between Boy Scouts'

officials discusses a meeting with a Long Island CYO official and the St. Thomas pastor in which O'Hara's activities as a Boy Scouts' leader and a teacher in the Catholic schools was discussed and the need to keep him away from children acknowledged. The letter states that O'Hara "happens to be a teacher in the [Archdiocese] Catholic schools and he will be up before their Board of Education this week and a determination made by the Catholic Church."

11. At all relevant times, the Archdiocese of New York and the Church thus knew or should have known that O'Hara was black listed by the Boy Scouts because of a credible complaint of child sexual abuse. Despite the Archdiocese's Board of Education meeting to discuss O'Hara's future as an educator in the Archdiocese's Catholic school system, O'Hara's career as a parochial school teacher continued unabated, and he received assignments in Catholic schools within the Archdiocese of New York for years thereafter.

12. In or about 1975-76, the Archdiocese assigned O'Hara to be CYO Camp Director at Camp Hayes in Godeffroy, New York. Another victim of child sexual abuse by O'Hara at the camp disclosed the abuse to Father Frank Stinner. Instead of reporting to law enforcement or taking other appropriate action against O'Hara to protect children, Father Stinner gave the victim penance and told him to never speak of the sexual abuse again.

13. From approximately 1978 to 1984, O'Hara was a teacher and basketball coach at St. Matthew School, where K.H. was a student and a member of the basketball team.

14. In or about 1986, the Archdiocese assigned O'Hara as the teacher and basketball coach at Immaculate Conception in the Bronx. Upon information and belief, O'Hara was arrested for sexual abuse of boys in his position at Immaculate Conception. He was convicted for sexual crimes against children.

15. Eugene Maher ran the CYO basketball program at St. Matthew in the 1980's. Upon information and belief, Maher was hired or retained as an employee or volunteer by officials of St. Matthew. Plaintiff was a member of Maher's CYO team as well as the St. Matthew school basketball team.

16. Subsequent to St. Matthew, Plaintiff attended Archbishop Stepinac High School. Father Donald Malone was at that time the Principal of Archbishop Stepinac.

17. Upon information and belief, in or about 1979, prior to his sexual assaults of Plaintiff, Father Malone was arrested for soliciting sex from a minor.

18. Shortly after Plaintiff graduated from Archbishop Stepinac in 1988, Father Malone was again arrested for soliciting a minor for sex. The police agreed not to press charges against Father Malone if the Archdiocese removed him as Principal of Archbishop Stepinac, referred him to counseling, and kept him in a position away from children. The Archdiocese quickly and quietly removed Father Malone from Archbishop Stepinac, maintaining complete secrecy as to the reason for doing so with the Archbishop Stepinac Catholic community. Despite the promise to keep Father Malone away from children, the Archdiocese subsequently assigned him to parishes where he would have access to children, including Blessed Sacrament on Staten Island, Holy Family in the Bronx, and St. Patrick's in Orange County.

19. At all relevant times, the Archdiocese and the Church knew or in the exercise of reasonable care should have known that Michael J. O'Hara had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

20. At all relevant times, the Archdiocese and the Church knew or in the exercise of reasonable care should have known that Eugene Maher had a propensity for the conduct which

caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

21. At all relevant times, the Archdiocese and Archbishop Stepinac knew or in the exercise of reasonable care should have known that Father Malone had a propensity for the conduct which caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

22. At all relevant times, it was reasonably foreseeable to the Archdiocese and the Church that Michael J. O'Hara would commit acts of child sexual abuse or assault on a child.

23. At all relevant times, it was reasonably foreseeable to the Archdiocese and the Church that Eugene Maher would commit acts of child sexual abuse or assault on a child.

24. At all relevant times, it was reasonably foreseeable to the Archdiocese and Archbishop Stepinac that Father Malone would commit acts of child sexual abuse or assault on a child.

25. At all relevant times, the Archdiocese and the Church knew or should have known that Michael J. O'Hara was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

26. At all relevant times, the Archdiocese and the Church knew or should have known that Eugene Maher was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

27. At all relevant times, the Archdiocese and Archbishop Stepinac knew or should have known that Father Malone was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

28. With such actual or constructive knowledge, the Archdiocese, the Church and

Archbishop Stepanic provided, respectively, Michael J. O'Hara, Eugene Maher and Father Malone, with unfettered access to Plaintiff and gave each of them the opportunity to commit foreseeable acts of child sexual abuse or assault.

Sexual Abuse of Plaintiff

29. Michael J. O'Hara sexually assaulted Plaintiff on multiple occasions over a period of approximately 2 ½ years when Plaintiff attended St. Matthew School, from approximately 1982 – 1984.

30. O'Hara conducted basketball practices in the basement gym of St. Matthew School. He would sexually assault Plaintiff and other boys on the team in one of the closet rooms on the side of the gym. O'Hara would also take selected boys on the basketball team, including Plaintiff, to his residence after school, show them pornography and sexually assault them.

31. Eugene Maher, in the same time frame, sexually molested Plaintiff on multiple occasions. He would conduct practices for his CYO basketball team in the basement gym of St. Matthew School. He would sexually assault Plaintiff in one of the closet rooms on the side of the gym.

32. Father Malone sexually assaulted Plaintiff over the course of approximately one year when Plaintiff was about 16 – 17 years old and attending Archbishop Stepinac High School. The sexual assaults occurred in Father Malone's office at Archbishop Stepinac.

Archdiocese's Concealment of Acts of Sexual Abuse by Clergy

33. The Archbishop of the Archdiocese at all relevant times knew that Clergy of the Archdiocese, under his supervision and control, were grooming and sexually molesting children with whom they would have contact in their educational, ministry and pastoral functions. At all

relevant times, the Archbishop knew that this was a widespread, ubiquitous and systemic problem in the Archdiocese, involving many clergy persons and numerous victims.

34. In or about April, 2019, the Archdiocese released a list of 120 of its clergy, acknowledging what it deemed credible allegations of child sexual abuse that had been made against the listed clergymen. These clergymen are acknowledged to have abused children within the Archdiocese over decades. The list includes Father Malone.

35. Despite receiving credible allegations of child sexual abuse against clergy, the Archdiocese acted to conceal these allegations in an effort to avoid scandal and accountability.

36. This concealment was in accordance with a policy of the Archdiocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Archdiocese, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

37. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon

those to whom it pertains to keep and observe it in the minutest detail.” *Crimen Sollicitationis* at paragraph 24.

38. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

39. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

40. Fr. Fitzgerald’s reports were kept secret under the Holy See’s standing policy to avoid scandal at all costs. It’s recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Archdiocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

41. The Holy See’s policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Archdiocese, knowingly allowed, permitted and encouraged child sex abuse by the Archdiocese’s agents.

42. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move

offending priests to other locations once they have been determined to be “delinquent.” In response to allegations, the document mandates that supplementary penalties include: “As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place.” *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

43. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Archdiocese, in 1988 and 2001.

44. The policies and practices of the Archdiocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;
- (b) concealing from parishioners and even other clergy that a clergyman reassigned to their parish posed a danger of sexual abuse to children;
- (c) failing to alert parishioners from the clergyman’s prior assignments that their children were exposed to a known or suspected child molester;
- (d) failing to report sexual abuse to criminal authorities; and
- (e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

These same policies and practices applied to lay educators, including teachers and coaches, employed by the Archdiocese.

45. The policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Archdiocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling clergy.

46. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic education activities and in close proximity to or with the Archdiocese's educators and clergy.

47. The Archdiocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its educators and clergy to sexually abuse children.

48. At all relevant times, while the Archdiocese had special and unique knowledge of the risk of child sexual abuse by its educators, such educators who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted them to have access to their children.

49. Plaintiff and his parents had no opportunity to protect Plaintiff against a danger that was solely within the knowledge of the Archdiocese.

50. Upon information and belief, the Archdiocese engaged in a plan and scheme pursuant to the Holy See's secrecy policies and practices to avoid discovery of the child sexual abuse of its agents and the Archdiocese's wrongful conduct which facilitated the sexual abuse of young children.

Nature of Conduct Alleged

51. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of

the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

52. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Michael J. O'Hara, Eugene Maher and/or Father Malone, to retain them in their positions as educators with unfettered access to children.

COUNT I
NEGLIGENCE
(against St. Matthew)

53. Plaintiff repeats and realleges Paragraphs 1 through 52 above.

54. At all material times, St. Matthew and Plaintiff were in a special relationship of school-student, in which St. Matthew owed Plaintiff a duty of reasonable care.

55. At all material times, St. Matthew and Michael J. O'Hara were in a special relationship of employer – employee, in which St. Matthew owed a duty to control the acts and conduct of Michael J. O'Hara to prevent foreseeable harm.

56. At all material times, St. Matthew and Eugene Maher were in a special relationship, as Maher was coaching boys in basketball on its premises, and thus St. Matthew owed a duty to control the acts and conduct of Eugene Maher on its premises to prevent foreseeable harm.

57. At all material times, St. Matthew owed Plaintiff a duty to exercise the level of care that a parent of ordinary prudence would observe under the circumstances.

58. The Church owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of Plaintiff while he was under the care, custody or in the presence of St. Matthew. The Church's duties encompassed the hiring, retention and supervision of Michael J. O'Hara, and otherwise providing a safe environment for Plaintiff. The Church's duties also encompassed the supervision of Eugene Maher on its premises.

59. St. Matthew breached these duties by failing to protect the minor K.H. from sexual assault and lewd and lascivious acts committed by O'Hara and Maher.

60. At all relevant times, the Church created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

61. At all relevant times, the Church had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

62. As a direct and proximate result of St. Matthew's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

63. The Church's acts and conduct shows a reckless or willful disregard for the safety and well-being of K.H.

WHEREFORE, Plaintiff demands judgment against the Church for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(against Archbishop Stepinac)

64. Plaintiff repeats and realleges Paragraphs 1 through 52 above.

65. At all material times, Archbishop Stepinac and Plaintiff were in a special relationship of school – student, in which Archbishop Stepinac owed Plaintiff a duty of reasonable care.

66. At all material times, Archbishop Stepinac and Father Malone were in a special relationship of employer – employee, in which Archbishop Stepinac owed a duty to control the acts and conduct of Father Malone to prevent foreseeable harm.

67. Archbishop Stepinac owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of Archbishop Stepinac, including on school grounds and in school sponsored activities. Archbishop Stepinac's duties encompassed the retention and supervision of Father Malone and otherwise providing a safe environment for Plaintiff.

68. At all material times, Archbishop Stepinac owed Plaintiff a duty to exercise the level of care that a parent of ordinary prudence would observe under the circumstances.

69. Archbishop Stepinac breached these duties by failing to protect the minor K.H. from sexual assault and lewd and lascivious acts committed by an agent and employee of Archbishop Stepinac.

70. At all relevant times, Archbishop Stepinac created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

71. At all relevant times, Archbishop Stepinac had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

72. As a direct and proximate result of Archbishop Stepinac's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

73. Archbishop Stepinac's acts and conduct shows a reckless or willful disregard for the safety and well-being of K.H.

WHEREFORE, Plaintiff demands judgment against Archbishop Stepinac for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT III
NEGLIGENCE
(against the Archdiocese)

74. Plaintiff repeats and realleges Paragraphs 1 through 53 above.

75. At all material times the Archdiocese, as principal, and the Church as agent, were in an agency relationship, such that the Church acted on the Archdiocese's behalf, in accordance with the Archdiocese's instructions and directions on all matters, including those relating to its educators, including teacher and coaching personnel. The acts and omissions of the Church were subject to the Archdiocese's plenary control, and the Church consented to act subject to the Archdiocese's control.

76. At all material times the Archdiocese, as principal, and Archbishop Stepinac, as agent, were in an agency relationship, such that Archbishop Stepinac acted on the Archdiocese's behalf, in accordance with the Archdiocese's instructions and directions on all matters, including those relating to clergy personnel. The acts and omissions of Archbishop Stepinac were subject to the Archdiocese's plenary control, and Archbishop Stepinac consented to act subject to the Archdiocese's control.

77. At all material times, the Archdiocese and Plaintiff were in a special relationship of school-student and church - parishioner, in which the Archdiocese owed Plaintiff a duty of reasonable care.

78. At all material times, the Archdiocese and Michael J. O'Hara were in a special relationship of employer – employee, in which the Archdiocese owed a duty to control the acts and conduct of O'Hara to prevent foreseeable harm.

79. At all material times, the Archdiocese and Eugene Maher were in a special relationship of employer-employee or principal-volunteer, in which the Archdiocese owed a duty to control the acts and conduct of Eugene Maher to prevent foreseeable harm.

80. At all material times, the Archdiocese and Father Malone were in a special relationship of employer-employee, in which the Archdiocese owed a duty to control the acts and conduct of Father Malone to prevent foreseeable harm.

81. The Archdiocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Archdiocese. The Archdiocese's duties encompassed the hiring, retention and/or supervision of Michael J. O'Hara, Eugene Maher and Father Malone, and otherwise providing a safe environment for Plaintiff.

82. At all material times, the Archdiocese owed Plaintiff as a student in its schools a duty to exercise the level of care that a parent of ordinary prudence would observe under the circumstances.

83. The Archdiocese breached these duties by failing to protect the minor K.H. from sexual assaults and lewd and lascivious acts committed by agents or employees of the Archdiocese.

84. At all relevant times, the Archdiocese created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

85. At all relevant times, the Archdiocese had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

86. As a direct and proximate result of the Archdiocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

87. The Archdiocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of K.H.

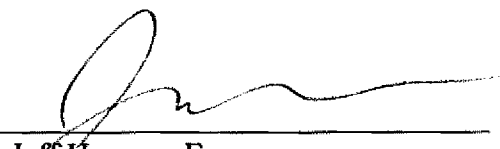
WHEREFORE, Plaintiff demands judgment against the Archdiocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
September 19, 2019

By: _____


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